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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,083	02/15/2001	David H. McDaniel	071340.0019	5784

25227 7590 12/22/2006
MORRISON & FOERSTER LLP
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EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3735

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/819,083	Applicant(s) MCDANIEL, DAVID H.	
	Examiner Ahmed M. Farah	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 7-10 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-10 is/are rejected:
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/6/06; 11/27/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 7-9 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman US Patent No. 6,413,268 in view of Doiron et al., described above.

Hartman discloses a method for treating psoriasis by irradiating the affected skin with a UV light. He further teaches that the use of photoactive agents during phototherapy treatment of psoriasis is well known in the art (see col. 1, lines 22-24). However, Hartman fails to disclose the types of the energy sources used in the prior art. Doiron et al. disclose an alternative phototherapeutic device useful for treating skin conditions such as psoriasis and hyperbilirubinemia, the device comprising a plurality of light emitting diodes.

Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Hartman in view of Doiron et al. and use an LED(s) as an equivalent alternative light source to provide the treatment energy.

Art Unit: 3735

2. Claim 10 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman in view of Doiron et al as applied to claims 7-9 above, and further in view of Tankovich et al. US Patent No. 5,817,089.

Neither Hartman nor Doiron et al teach the use of ultrasound to aide the treatment of psoriasis. However, the applicant's written description teaches that the ultrasound is used to enhance of particles/agents into the tissue. Applicant's written description further recognizes that the use of ultrasonic energy to enhance penetration of particles into a tissue site is known in the art. In particular, page 15, lines 5-8 of the applicant's specification clearly teaches that Tankovich et al. ('089) use ultrasonic energy to enhance penetration of hair dye into the hair shaft.

Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Hartman in view of Tankovich et al. and use ultrasonic energy in order to enhance penetration of the photoactive agent into the tissue.

Response to Arguments

3. Applicant's arguments filed on September 25, 2006 have been fully considered but they are not persuasive.

As to the anticipation rejection of claims 7 and 9 in the prior Office Action mailed on March 24, 2006, the applicant argues that neither US Patent No. 5,698,866 to Doiron et al. (herein after '866) nor the reference/publication cited in its background section to Jori et al., teaches or suggest the claimed invention. To support his argument, and to further clarify the teaching of Jori et al., Applicant submits a readable copy of the

Art Unit: 3735

publication. Applicant further argues "Jori's teaching is limited to using an LED array to treat tumors and the use of hematoporphyrin."

In response to the argument directed to the teaching of Jori et al., the examiner agrees with the applicant that Jori fails to teach a method for treating psoriasis as presently claimed. Hence, the examiner withdraws from the anticipation rejection.

However, as recited in col. 3, lines 37-41, Doiron ('866) teaches the use of an LED array, such as the LED array described by Jori et al., to treat psoriasis or other skin diseases is well known in the art. Therefore, the examiner maintains the obviousness rejection of the prior Office Action.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

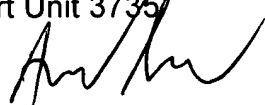
Art Unit: 3735

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marmor II Charles can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ahmed M Farah
Primary Examiner
Art Unit 3735



December 11, 2006.